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2 Entered on Docket
3 December 09, 2008
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A handwritten signature in black ink, appearing to read "Ri" and "Riegle".

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2 Hon. Linda B. Riegle
3 United States Bankruptcy Judge
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5 **UNITED STATES BANKRUPTCY COURT**
6 **DISTRICT OF NEVADA**
7

8 In re:
9 USA COMMERCIAL MORTGAGE COMPANY,
10 Debtor.
11

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

12 In re:
13 USA CAPITAL REALTY ADVISORS, LLC,
14 Debtor.
15

JOINTLY ADMINISTERED
Chapter 11 Cases

16 In re:
17 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
18 LLC,
19 Debtor.
20

Judge Linda B. Riegle
Adv. 08-1164

21 In re:
22 USA CAPITAL FIRST TRUST DEED FUND, LLC,
23 Debtor.
24

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN
SUPPORT OF ORDER
APPROVING SETTLEMENT
BEADLE, MCBRIDE, EVANS &
REEVES, LLP, ET AL.**

25 Affects:
26 All Debtors
27 USA Commercial Mortgage Company
28 USA Capital Realty Advisors, LLC
29 USA Capital Diversified Trust Deed Fund, LLC
30 USA Capital First Trust Deed Fund, LLC
31 USA Securities, LLC
32

1 USACM LIQUIDATING TRUST; and
 2 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 3 LLC;

Adv. No. 08-01164

4 Plaintiffs,

5 v.

6 BEADLE, MCBRIDE, EVANS & REEVES, LLP,
 7 REEVES, EVANS, MCBRIDE & ZHANG, LLP, TG
 8 MCBRIDE CPA LTD., and T. GARTH MCBRIDE,

9 Defendants.

10 This Court, having considered the *Application to Compromise and Settle Controversies with*
 11 *Beadle, McBride, Evans & Reeves, LLP, et al.* (the “Motion”) and the Declarations of Geoffrey L.
 12 Berman and Michael Tucker in support thereof and the arguments of counsel made at the hearing on
 13 the Motion to Compromise held December 8, 2008; and

14 This Court having considered the Pleading in Support of the Motion to Compromise and the
 15 arguments of counsel, now therefore makes the following findings of fact and conclusions of law under
 16 Federal Rule of Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052 and 9019.

17 1. Notice of the Motion (“Notice”) was properly served on all creditors of the above-titled
 18 estates.

19 2. The claims being settled are assets of the USACM Liquidating Trust (the “USACM
 20 Trust”). Geoffrey L. Berman (“Berman” or the “Trustee”) currently serves as a trustee of the USACM
 21 Liquidating Trust.

22 3. The claims being compromised also belong to USA Capital Diversified Trust Deed
 23 Fund, LLC (“DTDF”). Michael Tucker (the “Manager”) is the manager of DTDF.

4. The beneficiaries of USACM Trust and DTDF are the creditors of USA Commercial
 Mortgage Company (“USACM”) and the interest holders in DTDF.

1 5. The claims being compromised herein arise from professional services rendered by
 2 Beadle, McBride, Evans & Reeves, LLP, Reeves, Evans, McBride & Zhang, LLP, TG McBride CPA
 3 Ltd., and T. Garth McBride (collectively, "BMER") to DTDF and FTDF.

4 6. The USACM Trust and DTDF have investigated the merits of the claims against BMER
 5 and have conducted such investigation as they deemed reasonable into the merits of the claim. In
 6 addition, the USACM Trust and DTDF have inquired into the complexity of proving the potential
 7 claims, the expense of prosecuting such claims, the duration of litigation or other means for
 8 prosecuting the claims, and have evaluated the difficulties of collection and the assets available for
 9 satisfying any potential judgment.

10 7. Based upon this evaluation, the Trustee and the Manager have recommended this
 11 compromise as fair and equitable.

12 8. The Compromise is fair and equitable to the USACM Trust.

13 9. The Compromise is fair and equitable to DTDF.

14 10. At the present time, no claims for indemnification or contribution have been asserted,
 15 although the USACM Trust and DTDF have commenced litigation against persons and entities that
 16 may have such claims.

17 11. At the present time, no claims have been asserted by creditors of any of the above-titled
 18 estates against BMER.

19 12. No USACM Trust beneficiary or DTDF interest holder has objected to this
 20 compromise.

21 13. The amount paid in the settlement is fair and equitable in light of BMER's insurance
 22 policy limits and BMER's financial condition.

23 14. There was no collusion, fraud, or tortious conduct in connection with the negotiation

1 and execution of the Settlement Agreement. No evidence was presented to this Court that there was
2 any collusion, fraud, or tortious conduct aimed to injure any non-settling defendants in connection with
3 the negotiation and execution of the Settlement Agreement.

4 15. The Settlement Agreement is in the paramount interest of the creditors.

5 **CONCLUSIONS OF LAW**

6 1. Notice has been given to all parties to the above-titled estates.

7 2. USACM Trust and DTDF have standing to assert the claims being settled and have
8 standing to bring this Motion.

9 3. In light of the complexity of the potential claims, the expense of litigating these claims,
10 the duration of such litigation, and the difficulties of collection in the event the estates are successful,
11 the settlement with BMER is fair and equitable and reasonable under the circumstances and therefore
12 is approved under Federal Rule of Bankruptcy Procedure 9019.

CERTIFICATION PURSUANT TO LOCAL RULE 9021

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

The court has waived the requirement of approval under LR 9021

No parties appeared or filed written objections, and there is no trustee appointed in the case.

X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document.]

Approved Timothy R. O'Reilly /s/ *Timothy O'Reilly*

Approved Gary P. Sinkeldam /s/ Gary P. Sinkeldam

DATED: December 9, 2008

/s/ P. Jason Collins
P. Jason Collins

*Counsel for USACM Liquidating Trust and
USA Capital Diversified Trust Deed Fund, LLC*

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